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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,039	03/16/2004	Keith S. Smothers	030782-0004	1237
22204	7590	12/19/2005	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			HAYES, BRET C	
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			3641	

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,039

Applicant(s)

SMOTHERS, KEITH S.

Examiner

Bret C. Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-13 and 30-47 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,35,36 and 42-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-6,9-13,30-34 and 37-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 9 – 13 is withdrawn in view of the newly discovered reference(s) to US Patent No. 3,977,557 to Hazard. Rejections based on the newly cited reference(s) will follow.

Election/Restrictions

2. Applicant's election with traverse of Group 1 in the reply filed on 12 SEP 05 is acknowledged. The traversal is on the ground(s) that: 1) it is untimely; and, 2) no reasoning was provided regarding the distinction. This is not found persuasive because of the following:

1) MPEP 802 states, “37 CFR 1.142. Requirement for restriction.

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.”

(*Emphasis added.*) In this case, the restriction requirement was made before final action; and,

2) Distinct embodiments of the claimed invention are clearly disclosed in the specification and drawings. No other reasoning need be provided as to their distinctness. Applicant may choose to state for the record that the disclosed embodiments are obvious variants of each other,

Art Unit: 3644

and, therefore, not patentably distinct, but examiner is not obligated to provide any more rationale than as previously presented.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 7, 8, 35, 36, 42, 43 (2X – see Claim Objections below) and 44 – 46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12 SEP 05.

Claim Objections

4. Claim 9 is objected to because of the following informalities: line 6, the recitation “the feed dispenser is rendered non-reusable upon disengagement of the feeding assembly from the feed reservoir” would appear to be imprecise. Examiner recommends --the coupler is rendered non-reusable as an unreleasable coupler upon disengagement of the feeding assembly from the feed reservoir--. While the feed dispenser may not be capable of being reused without leaking, it could still be used with the assistance of some duct tape, or some such, for example. Further, it is clear that the coupler could still function as such, but it would lack the ability to be ‘unreleasable’ again. Further still, in this age of recycling, one could almost certainly find a use for just about anything discarded. Thus the ‘feed dispenser’ can be ‘reused’ in some capacity other than originally intended.

15. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they

Art Unit: 3644

must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 43 (2nd instance) and 44 have been renumbered 44 and 45, respectively.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

16. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

17. Claims 37 – 39 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the feeding assembly comprising a threaded screw cap having at least one conduit disposed therein, does not reasonably provide enablement for the feeding [*sic*] reservoir having such. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Only the feeding assembly has been disclosed as having a screw cap feature, while only the feed reservoir has been disclosed as having a threaded neck feature – for this embodiment.

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 3644

19. Claims 5, 11, 12 and 30 – 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

20. Claims 5 and 33 recite the limitation "said orifice" in 3. There is insufficient antecedent basis for this limitation in the claims. Because no orifice has been previously mentioned, these claims, as elected, will be further treated on the merits *as best understood*.

21. Claim 11 recites the limitation "said feeding reservoir" in line 1. There is insufficient antecedent basis for this limitation in the claim. For purposes of examination, the claim will be construed to recite --said feed reservoir--, instead, which is appropriate.

22. Claim 37 recites the limitation "said feeding reservoir" in line 1. There is insufficient antecedent basis for this limitation in the claim. For purposes of examination, the claim will be construed to recite --said feeding assembly--, instead, which is appropriate.

23. Claim 38 recites the limitation "said feeding reservoir" in line 1. There is insufficient antecedent basis for this limitation in the claim. Further, the claim recites "a flange" in line 2, which is unclear because "at least one reservoir flange" and "at least one feeding assembly flange" have previously been recited in claim 9. Is this a separate and distinct flange or one of the previously recited flanges? Even further still, the claim recites "a second" in line 3, which is indeterminable. A second what? For purposes of examination, this claim and its dependent claims, as elected, will be further treated on the merits *as best understood*.

24. Claims 40 and 41 recite the limitation "said feed" in line 1 of each. There is insufficient antecedent basis for this limitation in the claims. Because no feed has been previously mentioned, these claims will be further treated on the merits *as best understood*.

Art Unit: 3644

25. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

26. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

27. Claims 2 – 6, 9 – 12, 30 – 34, 37 – 41 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,977,557 to Hazard.

28. Re – claim 9, Hazard discloses the claimed invention including a feed dispenser, Fig. 7, for example, comprising: a feed reservoir 100 for holding a nourishment; a feeding assembly 22; and a coupler, Fig. 6, for example, wherein the coupler comprises at least one reservoir flange 118 disposed on the feed reservoir 100, and at least one feeding assembly flange 44 disposed on the feeding assembly so adapted.

29. Re – claim 2, Hazard further discloses the assembly 22 being so adapted.

30. Re – claim 3, Hazard further discloses the reservoir 100 comprising a first end, that opposite “top 112”, for example, and a second end 112, and wherein the second end 112 has an orifice – within neck 114, for example.

31. Re – claim 4, Hazard further discloses a neck 114 having an orifice – see Fig. 7 again.

32. Re – claim 5, Hazard further discloses the assembly 22 comprising a conduit 56, for example, having a first end and a second end, and wherein the first end of the conduit is so adapted. Regarding this recitation, there is a conduit disclosed and this conduit is in

communication with *an orifice as best understood*. That orifice being the one surrounded by neck portion 114 of Fig. 7, for example.

33. Re – claim 6, Hazard further discloses the assembly 22 comprising a liquid conduit 56, for example, having a first end and a second end (these ‘ends’ are clear from the Figure), and wherein the first and second ends so adapted.

34. Re – claim 10, Hazard further discloses wherein the flanges are oppositely angled, see Fig.7, again, for example.

35. Re – claim 11, Hazard further discloses wherein the reservoir 100 comprises a guide forming a path 114 and 116, for example, and the reservoir flange 118 is positioned on the path to form a directional restrictor, and wherein the assembly flange 44 forms a collocated directional restrictor.

36. Re – claim 12, Hazard further discloses the restrictor on the reservoir 118 comprises a ramped surface 120 connected to a blocking surface 122, and the collocated restrictor comprises a ramped surface 40 connected to a blocking surface 42, and functioning as claimed.

37. Re – claim 30, Hazard further discloses the assembly 22 being so adapted.

38. Re – claim 31, Hazard further discloses the reservoir 100 comprising a first end, that opposite “top 112”, for example, and a second end 112, and wherein the second end 112 has an orifice – within neck 114, for example.

39. Re – claim 32, Hazard further discloses a neck 114 having an orifice – see Fig. 7 again.

40. Re – claim 34, Hazard further discloses the feeding assembly 22 comprising a liquid conduit 56, for example, having a first end and a second end (these ‘ends’ are clear from the Figure), and wherein the first and second ends so adapted.

Art Unit: 3644

41. Re – claim 37, Hazard further discloses the feeding assembly **22** comprising a threaded screw cap, as opposed to threaded neck portion **114**, for example, and a directional restricting member **42**, for example.

42. Re – claim 38, Hazard further discloses a threaded neck **114** comprising a flange* (**44**) to form a directional restrictor; and a threaded screw cap, beginning at col. 5, line 65, for example, comprising at least one conduit **56**, and a second flange* (**118**) to form a second directional restrictor, wherein the threaded screw cap is so adapted. The directional restrictor members include elements **40**, **42**, **120** and **122**, for example, and Hazard would appear to anticipate these limitations as well.

43. Re – claim 39, Hazard discloses a liquid-tight seal*. Hazard discloses a spout **56** at col. 5, line 67, for example, which inherently in this field of endeavor, or at least implicitly, means for fluids, as most “spouts” used for solids dispensing would include several apertures in a twisting top configuration, such as talcum powder dispensers, for example. If that is the case then, it is likely that the seal of Hazard would not leak and would be liquid-tight as claimed.

44. Re – claims 40 and 41 Hazard discloses the claimed invention except for the inclusion of ‘feed’ that is either dissolvable in water or a premixed liquid solution, explicitly. The container of Hazard is clearly capable of performing the intended use recitations of including a feed as claimed and therefore anticipates the claim.

45. Re – claim 47, Hazard discloses the claimed invention as applied to claim 9 above.

Inasmuch as Hazard includes ‘a brim’ – see *The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2000 by Houghton Mifflin Company, Published by Houghton Mifflin Company, all rights reserved*, the first definition of brim: the rim or uppermost

Art Unit: 3644

edge of a hollow container or natural basin, which Hazard clearly discloses (indicated as that portion of neck 114 actually touching the numeric connecting line – the at least one feeding assembly flange is so adapted. To be slidable over the brim as recited, Hazard need only be capable of performing the intended function. As such, Hazard anticipates this claim. It has been held that the recitation that an element is “capable of” performing a function, such as, “slidable = capable of sliding”, is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

Claim Rejections - 35 USC § 103

46. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

47. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hazard, either alone, or in view of US Patent Application Publication No. US 2003/0168423 A1 to Williams.

48. Hazard discloses the invention substantially as claimed as applied above, except for the assembly comprising a gasket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the use of a gasket, since it was known in the art that sealing art that a gasket will help maintain a seal between two surfaces – a head gasket on an automobile, for example.

49. Hazard discloses the invention substantially as claimed as applied above, except for the assembly comprising a gasket. Williams teaches using a barrier film (a gasket) in the same field

Art Unit: 3644

of endeavor for the purpose of preventing fluids from leaking, see paragraph [0028], for example. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hazard to include a barrier film (a gasket) in order to prevent fluids from leaking.

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm, Eastern Standard Time.

The Central FAX Number is 571-273-8300.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571) 272 – 7045.

bh

30-Nov-05



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER